

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 6602 (PKL)

CANTONE & CO., INC.,

Plaintiff,

- against -

SEAFRIGO a/k/a SEAFRIGO  
MARSEILLE,

Defendant.

**DECLARATION OF  
STEPHEN H. VENGROW**

Stephen H. Vengrow declares that the following statement is true under the penalties of perjury::

1. I am a member of the I am a member of the law firm of Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, the law firm representing SeaFrigo Marseille in the captioned litigation.
2. Attached are the following Exhibits which are true and complete copies:

Exhibit A            Original SeaFrigo House Bill of Lading "HB/L no.  
E35039700000 dated September 22, 2006 and whose  
backside Clause 20 ("Jurisdiction") states:

Disputes arising under this Bill of Lading shall be determined by the Tribunal of Commerce at Le Havre under the law of France and no other Court shall have jurisdiction with regards to any such action.

Exhibit B            46 C.F.R. §520.4(5) of Part 20-Carrier Automated Tariffs  
Filing Rules issued by the Federal Maritime Commission.

Exhibit C            The Hatsu Marine ("Hatsu") backside bill of lading terms

and conditions downloaded from the Hatsu website and  
which shows Clause 29 ("Law and Jurisdiction"); to wit:

- (1) Governing Law-Save where the terms and conditions of this bill of lading provide for another law to apply, this bill of lading shall be governed by, and its terms and conditions shall be construed according to, English law.
- (2) Jurisdiction-All claims and disputes under this Bill shall be determined by the High Court of Justice, England to the exclusion of the jurisdiction of the courts of any other country provided always that the Carrier may in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of the courts of any other country which, but for the terms of this Bill of Lading, could properly assume jurisdiction to hear and determine such claims or disputes, but this shall not constitute a waiver of the terms of this provision for any other claims or disputes.
- (3) Notwithstanding, the provisions of Clause 29(1) and (2) above, if the carriage includes carriage to, from or through a port in the United States of America, the Merchant may refer any claim or dispute to the United States District Court for the Southern District of New York in who shall determine the same accordance with the laws of the United States of America.

Exhibit D            Sample Hatsu bill of lading (with backside) issued  
September 14, 2006 with backside terms and conditions  
which shows Clause 29 ("Law and Jurisdiction") in the  
exact same wording as stated in Exhibit C.

Exhibit E            Hatsu boiler plate B/L form with the backside terms and  
conditions reflecting identical language including Clause  
29 ("Law and Jurisdiction") language as shown in Exhibit  
C and D.

Exhibit F            Backside bill of lading terms and conditions represented

by Cantone's lawyer to be the backside of the SeaFrigo House Bill of Lading E35039700000.

Exhibit G	Plaintiff's complaint.
Exhibit H	Defendant's answer.
Exhibit I	The Docket Sheet
Exhibit J	Plaintiff's process of maritime attachment and garnishment
Exhibit K	Proposed French bank guarantee
Exhibit L	Plaintiff's claim statement
Exhibit M	Plaintiff's affidavit in support of attachment

3. I obtained **Exhibits D** and **E** from the Manager of the export department of Evergreen America Corporation located at One Evertrust Plaza, Jersey City, New Jersey. Specifically I ask for and received a sample Hatsu B/L with backside which was issued in September 2006 which is the same month that **Exhibit A** was prepared. [As shown in **Exhibit D**, Evergreen America acted as the agent of Hatsu. Today, Hatsu is part of the Evergreen Organization.] It was also explained to me that **Exhibit E** always shows the front side as blank until a confirmation booking is made by Hatsu or its agent at which time there is computer generated a front side Hatsu B/L form with the relevant shipping information inserted into each of the front side boxes with the backside terms and conditions remaining as the backside of the computer generated front side (as shown by **Exhibit D**).

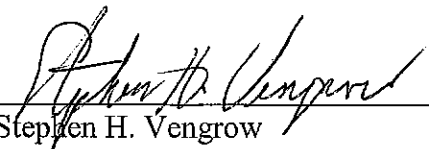
4. I would point out that in the “Declared Value” sentence, at the lower portion of the box entitled “Description of Packages and Goods” on the front side of the SeaFrigo HB/L no. E35039700000, there is referenced Clause 7.1 which is the SeaFrigo ad valorem language. Clause 7.1 (“Compensation for Loss and Damage”) states:

7.1. Unless otherwise mandated by compulsorily applicable law Carrier’s liability for compensation for loss or damage to goods shall in no case exceed the amount of US\$500 per package or per customary freight unit, unless the Merchant, with the consent of Carrier, has declared by writing a higher value for the goods in the space provided on the front of this Bill of Lading and paid extra freight per Carrier’s tariff, in which case such higher value shall be the limit of Carrier’s liability. Where a container is stuffed by shipper or on its behalf, and the container is sealed when received by Carrier for shipment, the Carrier’s liability will be limited to US\$500 with respect to the contents of each such container, except when the Shipper declares by writing the value on the face hereof and pays additional charges on such declared value. The freight charged on sealed containers when no higher valuation is declared by the Shipper is based on a value of US\$500 per container. However, Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitles to make the claim (underlining added).

5. Clause 7.1 (“Amount of Compensation and Limitation of Liability”) of Exhibit F (the purported backside terms and conditions of the SeaFrigo HB/L) is not an ad valorem clause. Rather, this Clause 7.1 is that of the Hatsu B/L (see **Exhibit C, D and E**); to wit:

(1) All claims for which the Carrier may be liable shall be adjusted and settled on the basis of the net invoice value of the Goods plus freight and insurance. Notwithstanding the foregoing it is agreed that that in no event shall this clause operate to increase the extent of the Carrier’s liability beyond the applicable market value at the port of discharge or place of delivery, if that be less than the net invoice value plus freight and insurance. In no event shall the Carrier be liable for any loss of profit or any consequential loss.

Dated: New York, NY, May 22, 2007

  
\_\_\_\_\_  
Stephen H. Vengrow

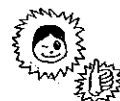
# **VENGROW EXHIBIT A**

# BILL OF LADING ORIGINAL

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**SEAFRIGO**  
YOUR REEFER LOGISTICS SPECIALIST



<b>SHIPPER</b> (Principal or Seller-license and address) BCS S.A. Z.I. LES FRARIES  42 740 SAINT PAUL EN JAREZ FRANCE		<b>BILL OF LADING NUMBER</b> E35039700000	
<b>CONSIGNEE</b> (Non-Negotiable unless consigned to order) CANTONE & CO INC 14 EAST 60TH STREET SUITE 400 NEW-YORK 10022 U.S.A.		<b>EXPORT REFERENCES</b> <b>BOOKING NUMBER</b> <b>FORWARDING AGENT (References)</b>	
<b>NOTIFY PARTY / INTERMEDIATE CONSIGNEE</b> (Name and address)  SAME AS CONSIGNEE		<b>POINT AND COUNTRY OF ORIGIN</b>	
<b>PRE-CARRIAGE BY</b>		<b>PLACE OF RECEIPT</b>	
<b>OCEAN VESSEL</b> STADT WISMAR		<b>PORT OF LOADING</b> FOS-SUR-MER	
<b>PORT OF DISCHARGE</b> NEW-YORK		<b>PLACE OF DELIVERY</b> NEWARK, NJ	
<b>MARKS AND NUMBERS</b>		<b>NO. OF PKGS</b>	
<b>DESCRIPTION OF PACKAGES AND GOODS</b> PARTICULARS DECLARED BY SHIPPER		<b>RELEASE INSTRUCTIONS / Presentation OFFICE</b>  PLEASE CONTACT : SEAFRIGO INC - Maïte CHAVARRI Phone : 201.770.1143	
<b>DECLARED VALUE</b>		<b>READ CLAUSE 7.1</b>	
<b>HEREOF CONCERNING EXTRA FREIGHT AND CARRIER'S LIMITATION OF LIABILITY.</b>		<b>CONTAINERIZED</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>GROSS WEIGHT</b>		<b>MEASUREMENT</b>	
EISU 564 813 / 0 SEAL : 0980958		1 500	
01X40 REEFER H.C. SAID TO CONTAIN BOXES OF BAKERY PRODUCTS FREIGHT COLLECT - ON BORD TEMPERATURE : -20°C EXPRESS B/L - NO ORIGINAL REQUIRED RYAN : N° 2332036		11 315.50 KGS	

ORIGINAL

## FREIGHT RATES, CHARGES, WEIGHTS AND / OR MEASUREMENTS

SUBJECT TO CORRECTION

PREPAID

COLLECT

TOTAL PREPAID

TOTAL COLLECT

Received by Carrier for shipment by ocean vessel between port of loading and port of discharge, and for arrangement or procurement of pre-carriage from place of receipt and on-carriage to place of delivery, where stated above, the goods as specified above in apparent good order and condition unless otherwise stated. The goods to be delivered at the above mentioned port of discharge or place of delivery, whichever applicable, subject always to the exceptions, limitations, conditions and liberties set out on the reverse side hereof, to which the Shipper and/or Consignee agree to accepting this Bill of Lading. IN WITNESS WHEREOF three (3) original Bills of Lading have been signed, not otherwise stated above, one of which is hereby delivered to the others shall be void.

SEAFRIGO MARSEILLE  
PLACE AND DATE OF ISSUE

21 Avenue CAMARTINE  
13170 LES PENNES-MIRABEAU  
Tél. 04 42 34 38 70 Fax 04 42 34 38 79

AS CARRIER

SEAFRIGO USA, INC.

2876

09  
MO

22  
DAY

2006  
YEAR

**1. CLAUSE PARAMOUNT :**

This Bill of Lading shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading dated Brussels the 25th August 1924 as amended by the protocols at Brussels on 23rd February 1968 and 21st December 1979. In the event that this Bill of Lading covers shipment to or from the United States, then the Bill of Lading shall have effect subject to the provision of the Carriage of Goods by Sea Act of the United States 46 U.S.C. sections 1300-1315 (hereafter, "COGSA"). The provisions stated in Hague rules or COGSA (except as may be otherwise specifically provided herein) shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the carrier.

**2. DEFINITIONS :**

2.1 "Ship" means the vessel named in this Bill of Lading, or any conveyance owned, chartered, or operated by Carrier or used by Carrier for the performance of this contract.

2.2 "Carrier" means Entrepôts et Transports Barbé Seafargo Le Havre, France on whose behalf this Bill of Lading has been signed.

2.3 "Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the Holder of this Bill of Lading and any person having a present or future interest in the Goods or any person acting on behalf of any of the above-mentioned persons.

2.4 "Package" is the largest individual unit of partially or completely covered or contained cargo made up by or for the Shipper which is delivered and entrusted to Carrier, including palletized units and each container stuffed and sealed by the Shipper or on its behalf, although the Shipper may have furnished a description of the contents of such sealed container on this Bill of Lading.

2.5 "Container" includes any container, trailer, transportable tank, lift van, flat, pallet, or any similar article of transport used to consolidate goods.

**3. SUBCONTRACTING :**

3.1 Carrier shall be entitled to subcontract on any terms the whole or any part of the handling, storage, or carriage of the goods and all duties undertaken by Carrier in relation to the goods.

3.2 Every servant or agent or subcontractor of Carrier shall be entitled to the same rights, exemptions from liability, defenses and immunities to which Carrier is entitled. For these purposes, Carrier shall be deemed to be acting as agent or trustee for such servants or agents, who shall be deemed to be parties to the contract evidenced in this Bill of Lading.

**4. ROUTE OF TRANSPORT :**

4.1 Carrier is entitled to perform the transport in any reasonable manner and by any reasonable means, methods and routes.

4.2 The Ship shall have the liberty to, at any time, adjust navigational instruments, make trial trips, dry dock, go to repair yards, shift berths, take in fuel or stores, embark or disembark any persons, carry contraband and hazardous goods, sail with or without pilots and save or attempt to save life or property. Delays resulting from such activities shall not be deemed a deviation.

**5. HINDRANCES AFFECTING PERFORMANCE :**

5.1 Carrier shall use reasonable endeavors to complete transport and to deliver the goods at the place designated for delivery.

5.2 If at any time the performance of this contract as evidenced by this Bill of Lading in the opinion of Carrier is or will be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind including strike and if by virtue of the above Carrier has no duty to complete the performance of the contract, Carrier, whether or not the transport is commenced may elect to:

- (a) treat the performance of this contract as terminated and place the goods at Merchant's disposal at any place Carrier shall deem safe and convenient, or
- (b) deliver the goods at the place of delivery.

In any event, Carrier shall be entitled to full freight for any goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.

**6. BASIC LIABILITY :**

6.1 Carrier shall be liable for loss of or damage to the goods occurring between the time when it takes goods into its charge and the time of delivery.

6.2 If it is established that the loss of or damage to the goods occurred during sea carriage, liability shall be governed either by the Hague rules or by COGSA (see section 1).

6.3 If it cannot be determined when the loss of or damage to the goods occurred, it shall be presumed that such loss or damage occurred while the goods were in the custody of Carrier.

6.4 Carrier does not undertake that the goods shall be delivered at any particular time and shall not be liable for any direct or indirect losses caused by any delay.

6.5 Carrier shall not be liable for any loss or damage arising from:

- (a) an act or omission of Merchant or person other than Carrier acting on behalf of Merchant from whom Carrier took the goods in charge,
- (b) compliance with the instructions of any person authorized to give them,
- (c) handling, loading, stowage or unloading of the goods by or on behalf of Merchant,
- (d) inherent vice of the goods,
- (e) lack of insufficiency of or defective condition of packing in the case of goods, which by their nature, are liable to wastage or damage when not packed or when not properly packed,
- (f) insufficiency or inadequacy of marks or numbers on the goods, coverings or unit loads,
- (g) fire, unless caused by actual fault or privity of Carrier,
- (h) any cause or event which Carrier could not avoid and the consequences of which he could not prevent by the exercise of due diligence.

6.6 With respect to the transportation performed by Inland Carriers to the point of loading or from the port of discharge, the responsibility of Carrier shall be to procure transportation by such carriers (one or more) and such transportation shall be subject to the Inland Carrier's contracts of carriage, tariffs and any law compulsorily applicable.

**7. COMPENSATION FOR LOSS AND DAMAGE :**

7.1 Unless otherwise mandated by compulsorily applicable law, Carrier's liability for compensation for loss of or damage to goods shall in no case exceed the amount of US \$500 per package or per customary freight unit, unless the Merchant, with the consent of Carrier, has declared by writing a higher value for the goods in the space provided on the front of this Bill of Lading and paid extra freight per Carrier's tariff, in which case such higher value shall be the limit of Carrier's liability. Where a container is stuffed by shipper or on its behalf, and the container is sealed when received by Carrier for shipment, the Carrier's liability will be limited to US \$500 with respect to the contents of each such container, except when the Shipper declares by writing the value on the face hereof and pays additional charges on such declared value. The freight charged on sealed containers when no higher valuation is declared by the Shipper is based on a value of US \$500 per container.

However, Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make the claim.

7.2 In any case where Carrier's liability for compensation may exceed the amounts set forth in clause 7.1 above, compensation shall be calculated by reference to the value of the goods, according to their current market price, at the time and place they are delivered, or should have been delivered, in accordance with this contract.

7.3 If the value of the goods is less than US \$500 per package or per customary freight unit, their value for compensation purposes shall be deemed to be the invoice value, plus freight and insurance, if paid.

**8. DESCRIPTION OF GOODS :**

Merchant warrants to Carrier that all particulars of the goods, including, without limitation, the marks, number, quantity and weight, furnished by Merchant are correct and Merchant shall indemnify Carrier against all losses arising from any inaccuracy.

**9. CARRIER'S CONTAINERS :**

9.1 If goods are not received by Carrier already in containers, Carrier may pack them in any type container.

9.2 Merchant shall be liable to Carrier for damage to Carrier's containers or equipment if such damage occurs while such equipment is in control of Merchant or its agents.

9.3 Merchant indemnifies Carrier for any damage or injury to persons or property caused by Carrier's containers during handling by or when in possession or control of Merchant.

9.4 Merchant undertakes to return such containers to Carrier within the time provided for in Carrier's applicable tariff, otherwise, Merchant shall pay Carrier for the demurrage or detention charges applicable to the containers.

**10. CONTAINER PACKED BY MERCHANT :**

If Carrier receives the goods already packed into containers:

1. This Bill of Lading is prima facie evidence of the receipt of the particular number of containers set forth, and that number only. Carrier accepts no responsibility with respect to the order and condition of the contents of the containers;

2. Merchant warrants that the stowage and seals of the containers are safe and proper and suitable for handling and carriage;

3. Delivery shall be deemed as full and complete performance when the containers are delivered by Carrier with the seals intact; and

4. Carrier has the right to open and inspect the containers at any time without notice to Merchant, and expenses resulting from same shall be borne by Merchant.

**11. DANGEROUS GOODS :**

11.1 Merchant may not tender goods of a dangerous nature without written application to Carrier and Carrier's acceptance of the same. In the application, Merchant must identify the nature of the goods with reasonable specificity as well as the names and addresses of the shippers and consignees.

11.2 Merchant shall distinctly and permanently mark the nature of the goods on the outside of the package and container and shall submit to Carrier or to the appropriate authorities all necessary documents required by law or by Carrier for the transportation of such goods.

11.3 If the goods subsequently, in the judgement of Carrier, become a danger to Carrier, the Ship, or other cargo, Carrier may dispose of the goods without compensation to Merchant and Merchant shall indemnify Carrier for any loss or expenses arising from such action.

**12. PERISHABLE GOODS :**

12.1 Goods of a perishable nature shall be carried in ordinary Containers without special protection, services or other measures unless there is noted on the reverse side of this Bill of Lading that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specially equipped Container or are to receive special attention in any way. The Merchant undertakes not to tender for transportation any Goods which require refrigeration without given written notice of their nature and the required temperature setting of the thermostatic controls before receipt of the Goods by the Carrier in case of refrigerated Container(s) packed by or on behalf of the Merchant. The Merchant undertakes that the Goods have been properly stowed in the Container and that the thermostatic controls have been properly set by him before receipt of the Goods by the Carrier and, if necessary, that the Goods have been pre-chilled before the loading into the Container. The Merchant's attention is drawn to the fact that refrigerated Containers are not designed to freeze down Goods which has not been presented for stuffing at or below its designated carrying temperature and the Carrier shall not be responsible for the consequences of cargo presented at a higher temperature than that required for the transportation. If the above requirements are not complied with the carrier shall not be liable for any loss of or damage to the Goods howsoever arising.

12.2 The term "apparent good order and condition" when used in this Bill of Lading with reference to Goods which require refrigeration does not mean that the Goods, when received were verified by the Carrier as being at the designated carrying temperature.

12.3 The Carrier shall in no event be held liable for damage to Goods due to condensation.

**13. DECK CARGO :**

13.1 Carrier has the right to carry the goods in any container under deck or on deck.

13.2 Carrier is not required to note "on deck storage" on the face of this Bill of Lading and goods so carried shall constitute under deck storage for all purposes including the General Average.

13.3 Except as otherwise provided by any law applicable to this contract, if this Bill of Lading states that the cargo is stowed on deck, then Carrier shall not be liable for any non-delivery, misdelivery, delay or loss to goods carried on deck, whether or not caused by Carrier's negligence or the ship's unseaworthiness.

**14. HEAVY LIFT :**

14.1 Single packages with a weight exceeding 2,240 pounds gross not presented to Carrier in enclosed containers must be declared in writing by Merchant before receipt of the packages by Carrier. The weight of such packages must be clearly and durably marked on the outside of the package in letters and figures not less than two inches high.

14.2 If Merchant fails to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the goods, and Merchant shall be liable for any loss of or damage to persons or property resulting from such failure and Merchant shall indemnify Carrier against any loss or liability suffered or incurred by Carrier as a result of such failure.

**15. DELIVERY :**

15.1 Carrier shall have the right to deliver the goods at any time at any place designated by Carrier within the commercial or geographic limits of the port of discharge or place of delivery shown in this Bill of Lading. 15.2 Carrier's responsibility shall cease when delivery has been made to Merchant, any person authorized by Merchant to receive the goods, or in any manner or to any other person in accordance with the custom and usage of the port of discharge.

15.3 If goods should remain in Carrier's custody after discharge from the ship and possession is not taken by Merchant, after notice, within the time allowed in Carrier's applicable tariff, the goods may be considered to have been delivered to Merchant, and, at Carrier's option, may be stored at Merchant's expense.

**16. NOTICE OF CLAIM :**

16.1 Written notice of claims for loss of or damage to goods occurring or presumed to have occurred while in the custody of Carrier must be given to Carrier at the port of discharge before or at the time of removal of the goods by one entitled to delivery. If such notice is not provided, removal shall be prima facie evidence of delivery by Carrier. If such loss or damage is not apparent, Carrier must be given written notice within three (3) days of the delivery.

**17. FREIGHT AND CHARGES :**

17.1 Freight may be calculated on the basis of the particulars of the goods furnished by Merchant. Carrier and Merchant agree that it may be difficult or impossible to assess damages if freight is incorrectly declared. Therefore, in case of incorrect declaration of the goods, Merchant shall pay a sum equal to three times the difference between the correct freight and the freight charged as liquidated damages, notwithstanding any other sum having been stated herein as freight payable. Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by Carrier to Merchant are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon Carrier unless the Carrier in writing specifically undertakes the handling of transportation of the shipment at a specific rate.

17.2 Freight shall be deemed earned upon booking of goods by Carrier, whether the freight be intended to be prepaid or collected at destination. Payment shall be in full and in cash, in the currency named in this Bill of Lading, or another currency at Carrier's option, interest at 12% shall run from the date when freight and charges are due and not returnable in any event. If the services of a freight forwarder are used for this transportation, those services shall be deemed to be performed as agent of Merchant and payment of freight to the freight forwarder is not payment to Carrier. Full freight shall be paid on damaged or unsound goods. In any referral for collection or action against the Merchant for monies due to Carrier, upon recovery by the Carrier, the Merchant shall pay the expenses of collection and/or litigation, including reasonable attorneys' fees.

17.3 Merchant shall be liable for all dues, duties, fines, taxes and charges, including consular fees, levied on the goods. Merchant shall be liable for return freight and charges on the goods if they are refused export or import by any government.

17.4 All persons encompassed within the definition of "Merchant" as provided in section 2 of this Bill of Lading shall be jointly and severally liable to Carrier for the payment of all freight and charges, including advances.

17.5 All persons encompassed within the definition of "Merchant" as provided in section 2 of this Bill of Lading shall be jointly and severally indemnify the Carrier for all claims, fines, penalties, damages, costs and other amounts which may be incurred or imposed upon the Carrier by reason of any breach of the Merchant of any of the provisions of this Bill of Lading or of any statutory or regulatory requirements.

**18. LIEN :**

The Carrier shall have a general lien on any and all property (and documents relating thereto) of the Merchant, in its possession, custody or control or on route, for all claims for charges, expenses or advances incurred by the Carrier in connection with any shipments or operations of the Merchant and if such claim remains unsatisfied for ten (10) days after demand for its payment is made, the Carrier may sell at public auction or private sale or otherwise dispose of the goods, upon ten (10) days written notice, registered mail (R.R.R.) to the Merchant, the goods, wares and/or merchandise or so much necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of the amount due the Carrier. Any surplus from such sale shall be transmitted to the Merchant, and the Merchant shall be liable for any deficiency in the sale. If the goods are not claimed during a reasonable time in the Carrier's opinion, the Carrier will make at his discretion and subject to his lien and without responsibility auction, sale, abandon or otherwise dispose of the goods at the risk and expenses of the merchant.

**19. TIME BAR :**

Carrier shall be discharged from all liability for loss of or damage to goods unless suit is brought within nine (9) months after delivery of the goods or the date when the goods should have been delivered. The time bar for overcharge claims shall be that set forth in Carrier's applicable tariff or thirty six (36) months, whichever is shorter and of legal effect under the laws of the country having jurisdiction over this contract.

**20. JURISDICTION :**

Disputes arising under this Bill of Lading shall be determined by the Tribunal of Commerce at Le Havre under the laws of France, and no other court shall have jurisdiction with regards to any such action.

**21. GENERAL AVERAGE :**

21.1 General Average shall be adjusted at New York, or any other port at Carrier's option, according to the York-Antwerp Rules of 1974. The General Average statement shall be prepared by adjusters appointed by Carrier.

21.2 In the event of accident, damage, danger or disaster after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for the consequence of which Carrier is not responsible by statute, contract or otherwise, Merchant shall contribute with Carrier in General Average to the payment of any sacrifice, loss or expense of a General Average nature that may be made or incurred, and shall pay salvage or special charges in respect of the goods. If a salvaging vessel is owned or operated by Carrier, Salvage shall be paid for as fully as if the salvaging vessel or vessel belonged to strangers.

**22. BOTH-TO-BLAME COLLISION CLAUSE :**

If the ship comes into collision with another vessel as a result of negligence of the other vessel and any negligence or fault on the part of Carrier or its servants or subcontractors, Merchant shall indemnify Carrier against all loss or liability to the other or non-carrying vessel or her owners, insofar as such loss or liability represents loss of, or damage to, or any claim what so ever of Merchant paid or payable by the other or non-carrying vessel or her owners to Merchant and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying ship or her owner. This provision shall apply as well where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault with respect to a collision or contact.

**23. CARRIER'S TARIFFS :**

23.1 The goods carried under this Bill of Lading are also subject to all the terms and conditions of tariff(s) on file with the Federal Maritime Commission, the Interstate Commerce Commission or any other regulatory agency which governs a particular portion of the carriage and the terms are incorporated herein as part of the terms and conditions of this Bill of Lading.

23.2 Copies of Carrier's tariffs may be obtained from carrier or its agents upon request or from the governmental body with whom the tariff has been filed.

**24. SEVERABILITY :**

The terms of this Bill of Lading shall be severable, and, if any part or term hereof shall be held invalid, such holding shall not affect the validity of enforceability of any other part or term hereof.

**25. VARIATION OF THE CONTRACT :**

No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such variation is in writing and is specifically authorized or ratified in writing by the Carrier.

# **VENGROW EXHIBIT B**

rates may be published in individual tariffs of conference members.

(c) *Agents.* Common carriers or conferences may use agents to meet their publication requirements under this part.

(d) *Notification.* Each common carrier and conference shall notify BTA, prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by electronically submitting Form FMC-1 via the Commission's website at [www.fmc.gov](http://www.fmc.gov). Any changes to the above information shall be immediately transmitted to BTA. The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

(e) *Location of tariffs.* The Commission will publish on its website, [www.fmc.gov](http://www.fmc.gov), a list of the locations of all carrier and conference tariffs. The Commission will update this list on a periodic basis.

[64 FR 11225, Mar. 8, 1999, as amended at 67 FR 39680, June 11, 2002]

#### § 520.4 Tariff contents.

(a) *General.* Tariffs published pursuant to this part shall:

- (1) State the places between which cargo will be carried;
- (2) List each classification of cargo in use;
- (3) State the level of ocean transportation intermediary, as defined by section 3(17)(A) of the Act, compensation, if any, to be paid by a carrier or conference;
- (4) State separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part of the aggregate of the rates or charges;
- (5) Include sample copies of any bill of lading, contract of affreightment or other document evidencing the transportation agreement;
- (6) Include copies of any loyalty contract, omitting the shipper's name;

(7) Contain an organization record, tariff record, and tariff rules; and

(8) For commodity tariffs, also contain commodity descriptions and tariff rate items.

(b) *Organization record.* Common carriers' and conferences' organization records shall include:

- (1) Organization name;
- (2) Organization number assigned by the Commission;
- (3) Agreement number, where applicable;
- (4) Organization type (e.g., ocean common carrier (VOCC), conference (CONF), non-vessel-operating common carrier (NVOCC) or agent);
- (5) Home office address and telephone number of firm's representative;
- (6) Names and organization numbers of all affiliates to conferences or agreements, including trade names; and
- (7) The publisher, if any, used to maintain the organization's tariffs.

(c) *Tariff record.* The tariff record for each tariff shall include:

- (1) Organization number and name, including any trade name;
- (2) Tariff number;
- (3) Tariff title;
- (4) Tariff type (e.g., commodity, rules, equipment interchange, or bill of lading);
- (5) Contact person and address;
- (6) Default measurement and currency units;
- (7) Origination and destination scope; and
- (8) A statement certifying that all information contained in the tariff is true and accurate and no unlawful alterations will be permitted.

(d) *Tariff rules.* Carriers and conferences shall publish in their tariffs any rule that affects the application of the tariff.

(e) *Commodity descriptions.* (1) For each separate commodity in a tariff, a distinct numeric code may be used. Tariff publishers are not required to use any numeric code to identify commodities; but should they choose to do so, they are encouraged to use the U.S. Harmonized Tariff Schedule ("U.S. HTS") for both the commodity coding and associated terminology (definitions).

(2) If a tariff publisher uses a numeric code to identify commodities, the following commodity types shall be preceded by their associated 2-digit prefixes, with the remaining digits at the publisher's option:

- (i) Mixed commodities—"99";
- (ii) Projects—"98"; and
- (iii) non-commodities, e.g., "cargo, n.o.s.," "general cargo," or "freight-all kinds"—"00".

(3) *Commodity index.* (i) Each commodity description created under this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Publishers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as "mixed commodities," "projects" or "project rates," "n.o.s." descriptions, and "FAK," shall be included in the commodity index.

(f) *Tariff rate items.* A tariff rate item ("TRI") is the single freight rate in effect for the transportation of cargo under a specified set of transportation conditions. TRIs must contain the following:

- (1) Brief commodity description;
- (2) TRI number (optional);
- (3) Publication date;
- (4) Effective date;
- (5) Origin and destination locations or location groups;
- (6) Rate and rate basis; and
- (7) Service code.

(g) *Location groups.* In the primary tariff, or in a governing tariff, a publisher may define and create groups of cities, states, provinces and countries (e.g., location groups) or groups of ports (e.g., port groups), which may be used in the construction of TRIs and other tariff objects, in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names.

(h) *Inland rate tables.* If a carrier or conference desires to provide intermodal transportation to or from named

points/postal regions, a combination rates, it shall clearly and accurately set forth the applicable charges in an "Inland Rate Tables" section. An inland rate table may be constructed to provide an inland distance which is applied to a per mile rate to calculate the inland rate.

(i) *Shipper requests.* Conference tariffs shall contain clear and complete instructions, in accordance with the agreement's provisions, stating where and by what method shippers may file requests and complaints and how they may engage in consultation pursuant to section 5(b)(6) of the Act, together with a sample rate request form on a description of the information necessary for processing the request or complaint.

(j) *Inland divisions.* Common carriers are not required to state separately or otherwise reveal in tariffs the inland division of a through rate.

#### § 520.5 Standard tariff terminology.

(a) *Approved codes.* The Standard Tarminology Appendix contains codes for rate bases, container sizes, service, etc., and units for weight, measure and distance. They are intended to provide a standard terminology baseline for tariffs to facilitate retriever efficiency. Tariff publishers may use additional codes, if they are clearly defined in their tariffs.

(b) *Geographic names.* Tariffs should employ locations (points) that are published in the National Imagery and Mapping Agency ("NIMA") gazetteer or the Geographic Names Information System ("GNIS") developed by the U.S. Geological Survey. Ports published or approved for publication in the World Port Index (Pub. No. 150) should also be used in tariffs. Tariff publishers may use geographic names that are currently in use and have not yet been included in these publications.

#### § 520.6 Retrieval of information.

(a) *General.* Tariffs systems shall present retrievers with the ability to:

- (1) Search for commonly understood tariff objects (e.g., commodities, origins, destinations, etc.) without restricting such search to a specific tariff;

# **VENGROW EXHIBIT C**



## B/L Clauses

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# **VENGROW EXHIBIT D**



NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER

ORIGINAL

(25) B/L NO. HTML 488618527078	(27) Number of Original B(s)/L THREE (3)	(29) Prepaid at NEW YORK, NY	(30) Collect at
	(28) Place of B(s)/L Issue/Date NEW YORK, NY SEP.14,2006	(31) Exchange Rate	(32) Exchange Rate
(26) Service Type / Mode FCL/FCL D/O	(33) Laden on Board SEP.14,2006 EVER DELUXE 0233-066W NORFOLK, VA		

EVERGREEN AMERICA CORPORATION  
*[Signature]*  
 By

(1)



# **VENGROW EXHIBIT E**



VOID 4/22/08 yr



# **VENGROW EXHIBIT F**

11. Do you have any other comments or suggestions for the board or staff that have not been included in the summary of your findings?

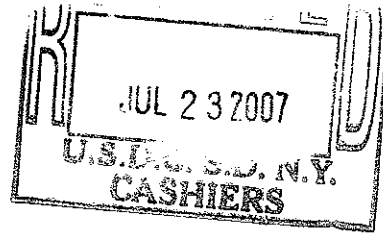
Disclosed by virtue of FOIA requests and the contents of the story (the above subject was one of the two officers, the other being Officer William Joseph Smith, who was killed in the same incident) and the fact that the subject was a police officer, the information is not exempt from disclosure under the Freedom of Information Act.

with the laws of the United States of America.

# **VENGROW EXHIBIT G**

**JUDGE LEISURE**

LENNON, MURPHY & LENNON, LLC  
Attorneys for Plaintiff  
CANTONE & CO., INC.  
The GrayBar Building  
420 Lexington Avenue, Suite 300  
New York, NY 10170  
(212) 490-6050 – phone  
(212) 490-6070 – fax



**'07 CIV 6602**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
CANTONE & CO., INC.,	:	07 Civ. _____
	:	
Plaintiff,	:	<b>ECF CASE</b>
	:	
- against -	:	<u>COMPLAINT</u>
	:	
SEAFRIGO a/k/a SEAFRIGO MARESEILLE,	:	
	:	
Defendant.	:	
-----X	:	

Plaintiff, CANTONE & CO., INC. (hereinafter "CANTONE" or "Plaintiff") by and through its attorneys, LENNON, MURPHY & LENNON, LLC, as and for its Verified Complaint against the Defendant, SEAFRIGO a/k/a SEAFRIGO MARSEILLE (hereinafter "SEAFRIGO" or "Defendant"), alleges, upon information and belief where indicated, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333.
2. At all times material to this action, CANTONE was, and still is, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware and has a principal place of business in New York, New York.

3. Upon information and belief, and at all times material to this action, SEAFRIGO was, and still is, a foreign company duly organized and operating under foreign law with a principal place of business in Le Havre, France.

4. At all times material to this action, Defendant SEAFRIGO was and is now engaged as a freight forwarder and acted in the transaction at issue as a common carrier of cargo by water for hire.

5. At all times material to this action, CANTONE was the cargo owner and receiver of 1500 packages of frozen ready-to-bake bakery products stowed within a freezer container.

6. At all times material to this action, SEAGFRIGO was the Carrier of the above cargo pursuant to a freight forwarding agreement and bill of lading number E35039700000 dated September 22, 2006 issued by Seafrigo Marseille.

7. Plaintiff's cargo was loaded in good order and condition on board the motor vessel "Stadt Wismar" (hereinafter "vessel") under the aforesaid bill of lading for carriage from Le Havre, France to Newark, NJ.

8. The vessel arrived at Newark, NJ on or about October 3, 2006 and unloaded the Plaintiff's cargo.

9. On discharge the Plaintiff's cargo was found to be damaged due to defrosting, thawing and re-freezing of the cargo which occurred during the voyage.

10. The aforesaid damage to Plaintiff's cargo was caused due Defendant's breach of its obligations as Carrier under the contract of carriage pursuant to which it was obligated to deliver the cargo to Plaintiff in same good order and condition as when the cargo was loaded on the vessel.

11. Defendant was negligent in its care and custody of the cargo in that, *inter alia*, it failed to ensure that the refrigerated container into which Plaintiff's cargo was loaded was in proper working order, it failed to ensure that the cargo was properly stowed and handled on the vessel, it failed to provide contracted for specialized accessorial services, and/or failed to ensure that the same was in proper working order and condition, including temperature controlled care of the cargo during all periods of custody and carriage, and in that it otherwise failed to properly arrange for the cargo to be safely carried aboard the vessel.

12. In addition, Seafrigo breached its duty as bailee of the cargo.

13. As a result of the Defendant's negligence and breach of contract as above described, Plaintiff has suffered damages in the principal sum of \$50,000.00, exclusive of pre-judgment interest, incidental and/or consequential damages, reasonable attorney's fees and litigation costs.

14. Despite due and repeated demand, Defendant has failed and/or refused to pay the sums due owing to Plaintiff.

**PRAYER FOR ISSUANCE OF MARITIME ATTACHMENT AND GARNISHMENT  
PURSUANT TO SUPPLEMENTAL ADMIRALTY RULE B**

15. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant.

16. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the Defendant held by any garnishee(s) within the District for the purpose of obtaining personal jurisdiction over the Defendant, and to secure the Plaintiff's claim as described above.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint, failing which default judgment be entered against the Defendant, SEAFRIGO a/k/a SEAFRIGO MARSEILLE, in the principal amount of Fifty Thousand Dollars and No/100 (U.S. \$50,000),, plus Plaintiff's incidental and/or consequential costs and damages, plus prejudgment interest at the rate of 9% per annum and post-judgment interest as may be allowed by the Court;

B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of \$60,000.00 belonging to, due or being transferred to, from, or for the benefit of the Defendant, including , but not limited to, such property as may be held, received or transferred in Defendant's name, or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishes to be

named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

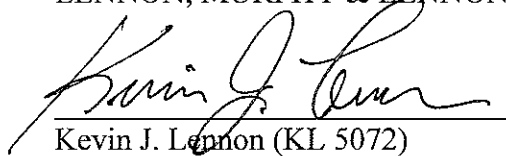
C. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

D. That this Court award Plaintiff the attorneys' fees and costs incurred in this action;

E. That the Plaintiff has such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York  
July 23, 2007

LENNON, MURPHY & LENNON, LLC

A handwritten signature in black ink, appearing to read "Kevin J. Lennon", is written over a horizontal line.

Kevin J. Lennon (KL 5072)  
Attorney for Plaintiff

The GrayBar Building  
420 Lexington Avenue, Suite 300  
New York, NY 10170  
(212) 490-6050 - phone  
(212) 490-6070 - fax  
Our ref.: 07-1040

VERIFICATION

State of New York     )  
                                  )     ss.:     City of New York  
County of New York    )

1.     My name is Reto Cantone.
2.     I am over 18 years of age, of sound mind, capable of making this  
Verification, and fully competent to testify to all matters stated herein.
3.     I am the President of Cantone & Co., Inc, the Plaintiff herein.
4.     I have read the foregoing Verified Complaint and know the contents  
thereof and believe the same to be true and accurate to the best of my knowledge, information  
and belief.
5.     The source of my knowledge and the grounds for my belief is my personal  
involvement in the subject transaction and the documents and information maintained within the  
files of Cantone & Co., Inc. on this matter.
6.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:       New York, NY  
              July 20, 2007



\_\_\_\_\_  
Reto Cantone

# **VENGROW EXHIBIT H**

9011/SHV

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 6602 (PKL)

CANTONE & CO., INC.,

Plaintiff,

- against -

SEAFRIGO a/k/a SEAFRIGO  
MARSEILLE,

Defendant.

ANSWER

Defendant, SEAFRIGO MARSEILLE, by its attorneys, Cichanowicz Callan Keane Vengrow & Textor, LLP, for its answer to the complaint, alleges on information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 2.
3. Denies the truth of the allegations of para. 3.
4. Denies the truth of the allegations of para. 4.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 5.
6. Denies the truth of the allegations of para. 6.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 7.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 9.

10. Denies the truth of the allegations of para. 10.

11. Denies the truth of the allegations of para. 11.

12. Denies the truth of the allegations of para. 12.

13. Denies the truth of the allegations of para. 13.

14. Denies the truth of the allegations of para. 14 except admits nonpayment.

15. Denies the truth of the allegations of para. 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 16

#### FIRST AFFIRMATIVE DEFENSE

17. This Court lacks jurisdiction over defendant's person.

#### SECOND AFFIRMATIVE DEFENSE

18. Defendant has not been served with a summons herein, and no summons issued in this action would be sufficient to compel defendant's appearance since this Court lacks both general and specific jurisdiction over defendant's person.

#### THIRD AFFIRMATIVE DEFENSE

19. Pursuant to F.R.Civ.P. Admiralty & Maritime Supplemental Rule E(8), defendant's appearance in this action is restricted to the defense of the claims herein for which plaintiff has obtained attachment or garnishment of defendant's property, and in any event is not

an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

#### FOURTH AFFIRMATIVE DEFENSE

20. The Rule B attachment and garnishment herein is invalid, and the circumstances of the said attachment and garnishment show a want of equity warranting its vacation.

#### FIFTH AFFIRMATIVE DEFENSE

21. The complaint pleads a claim arising out of a bill of lading contract for the carriage of goods by sea from a foreign port to a U.S. port issued by defendant as common carrier. If those allegations are true, then the rights and obligations of the parties are subject to the U.S. Carriage of Goods by Sea Act and the bill of lading. This defendant claims the benefit of all applicable laws, contracts and tariffs.

#### SIXTH AFFIRMATIVE DEFENSE

22. Defendant claims the benefit of any forum selection or choice of forum provision contained in the applicable contracts.

#### SEVENTH AFFIRMATIVE DEFENSE

23. This action should be dismissed on grounds of forum non conveniens.

EIGHTH AFFIRMATIVE DEFENSE

24. The cargo loss and damage complained of occurred, if at all, as a result of the inherent vice or defect or pre-existing condition of the goods, or as a result of the fault or neglect of plaintiff or those for whom plaintiff is responsible.

NINTH AFFIRMATIVE DEFENSE

25. Plaintiff did not mitigate its damages.

WHEREFORE, defendant, SEAFRIGO MARESEILLE, respectfully requests the following relief:

- A. Judgment dismissing the complaint and awarding defendant the costs and disbursements of this action; and
- B. An order vacating plaintiff Rule B attachment and garnishment and granting defendant all damages caused by plaintiff's wrongful attachment and garnishment.

Dated: New York, NY, August 24, 2007

CICHANOWICZ, CALLAN, KEANE,  
VENGROW & TEXTOR, LLP  
Attorneys for Defendant  
SEAFRIGO MARSEILLE

By: Stephen H. Vengrow  
Stephen H. Vengrow (SHV-3479)  
61 Broadway, Suite 3000  
New York, New York 10006-2802  
(212)344-7042

TO: Opposing Counsel

**CERTIFICATE OF SERVICE BY REGULAR U.S. MAIL AND BY ECF**

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.

2. On August 24, 2007, I served a complete copy of Seafrigo's Answer to Plaintiff's Complaint, by regular U.S. mail and by ECF, to the following attorneys at their ECF registered address and at the following address:

To: Kevin John Lennon  
Lennon, Murphy & Lennon, LLC  
The GrayBar Building  
420 Lexington Avenue  
Suite 300  
New York, NY 10170  
(212) 490-6050  
Fax: (212) 490-6070  
Email: [kjl@lenmur.com](mailto:kjl@lenmur.com)

\_\_\_\_\_  
s/ Jessica De Vivo

Jessica De Vivo

DATED: August 24, 2007  
New York, New York

# **VENGROW EXHIBIT I**

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-06602-PKL**

Cantone & Co., Inc. v. Seafrigo  
Assigned to: Judge Peter K. Leisure  
Demand: \$60,000  
Cause: 28:1333 Admiralty

Date Filed: 07/23/2007  
Jury Demand: None  
Nature of Suit: 120 Contract: Marine  
Jurisdiction: Federal Question

**Plaintiff**

**Cantone & Co., Inc.**

represented by **Kevin John Lennon**  
Lennon, Murphy & Lennon, LLC  
The GrayBar Building  
420 Lexington Avenue  
Suite 300  
New York, NY 10170  
(212) 490-6050  
Fax: (212) 490-6070  
Email: kjl@lenmur.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Seafrigo**  
*also known as*  
Seafrigo Mareseille

represented by **Stephen H Vengrow**  
Cichanowicz, Callan, Keane, Vengrow & Textor  
61 Broadway, Suite 3000  
New York, NY 10006  
212-344-7042  
Fax: 212-344-7285

Email: [svengrow@cckvt.com](mailto:svengrow@cckvt.com)  
**ATTORNEY TO BE NOTICED**

V.

**Garnishee**

**Societe Generale New York Branch**

represented by **Richard Joseph Reisert**  
 Clark, Atcheson & Reisert  
 7800 River Road  
 North Bergen, NJ 07047  
 201-537-1200  
 Fax: 201-537-1201  
 Email: [reisert@navlaw.com](mailto:reisert@navlaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/23/2007	<a href="#"><u>1</u></a>	COMPLAINT against Seafrigo. (Filing Fee \$ 350.00, Receipt Number 621952)Document filed by Cantone & Co., Inc..(mbe) (Entered: 07/25/2007)
07/23/2007		SUMMONS ISSUED as to Seafrigo. (mbe) (Entered: 07/25/2007)
07/23/2007		Magistrate Judge Debra C. Freeman is so designated. (mbe) (Entered: 07/25/2007)
07/23/2007		Case Designated ECF. (mbe) (Entered: 07/25/2007)
07/23/2007	<a href="#"><u>2</u></a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Cantone & Co., Inc..(mbe) (Entered: 07/25/2007)
07/23/2007	<a href="#"><u>8</u></a>	EX PARTE ORDER FOR PROCESS OF MARITIME ATTACHMENT against all tangible or intangible property, credits, letter of credit, bills of lading effects, debts and monies, electronic funds transfers, freights, sub-freights, charter hire, sub charter hire or any other funds or property up to the amount of \$60,000.00, belonging to, due or being transferred to, from or for the benefit of the Defendant. (Signed by Judge George B. Daniels on 7/23/07) (djc) (Entered: 08/27/2007)
07/26/2007	<a href="#"><u>3</u></a>	AFFIDAVIT of Kevin J. Lennon in Support. Document filed by Cantone & Co., Inc.. (Lennon, Kevin) (Entered: 07/26/2007)

08/15/2007	<a href="#"><u>4</u></a>	NOTICE OF APPEARANCE by Richard Joseph Reisert on behalf of Societe Generale New York Branch (Reisert, Richard) (Entered: 08/15/2007)
08/15/2007	<a href="#"><u>5</u></a>	ANSWER to Writ of Garnishment <i>Report of Garnishee Societe Generale New York Branch to Plaintiff's Maritime Attachment</i> . Document filed by Societe Generale New York Branch. (Reisert, Richard) (Entered: 08/15/2007)
08/24/2007	<a href="#"><u>6</u></a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Seafrigo.(Vengrow, Stephen) (Entered: 08/24/2007)
08/24/2007	<a href="#"><u>7</u></a>	ANSWER to Complaint. Document filed by Seafrigo.(Vengrow, Stephen) (Entered: 08/24/2007)

**PACER Service Center****Transaction Receipt**

05/21/2008 15:54:12

<b>PACER Login:</b>	cc0860	<b>Client Code:</b>	Optional for PACER use only
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:07-cv-06602-PKL
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

# **VENGROW EXHIBIT J**

07-6602 (PFL)

*Docket no.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the Southern District of New York (or designated process server) - GREETINGS:

WHEREAS a Verified Complaint has been filed in the United States District Court for the Southern District of New York on the 23rd day of July 2007 by

CANTONE & CO., INC.,

Plaintiff,

against

SEAFRIGO a/k/a SEAFRIGO MARSEILLE,

Defendant,

in a certain action for breach of maritime contract wherein it is alleged that there is due and owing from the Defendant to the said Plaintiff the amount of \$60,000.00 and praying for process of maritime attachment and garnishment against the said Defendant,

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee(s) shall serve their answer(s), together with answers to any interrogatories served with the Complaint, within 20 days after service of process upon him and requires that Defendant shall serve its answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

NOW, THEREFORE, we do hereby command you that if the said Defendant cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach other property, credit and effects to the amount sued for in the hands of:

ABN Amro, American Express Bank, Bank of America, Bank of China, Bank of New York, Barclay's Bank, BNP Paribas, Calyon, Citibank, Deutsche Bank, HSBC Bank USA Bank, J.P. Morgan Chase, Societe Generale, Standard Chartered Bank, UBS, and/or Wachovia Bank N.A.

to wit: property, letters of credit, deposits, funds, credits, bills of lading, debts, settlement agreements, or other assets, tangible or intangible, in whatever form of:

SEAFRIGO a/k/a SEAFRIGO MARSEILLE

and that you promptly after execution of this process, file the same in this court with your return thereon.

WITNESS, the Honorable Kimba M. Wood, Chief Judge of said Court, this \_\_\_\_ day of July 2007, and of our Independence the two hundred and thirty-first.

Lennon, Murphy & Lennon, LLC  
Attorneys for Plaintiff  
The Gray Bar Building  
420 Lexington Ave., Suite 300  
New York, NY 10170  
Phone (212) 490-6050

J. MICHAEL McMAHON  
Clerk

By: \_\_\_\_\_  
Deputy Clerk

A TRUE COPY  
J. MICHAEL McMAHON, CLERK  
BY:   
DEPUTY CLERK

NOTE: This Process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and/or New York Civil Practice Law and Rules, Article 62.



# **VENGROW EXHIBIT K**



**Compagnie Financière du Crédit Mutuel**

Groupe Arkéa

**Département des Activités Internationales**  
**International Department**  
SWIFT : CMBRFR2B

December 26, 2007

Lennon, Murphy & Lennon, LLC  
The GrayBar Building  
420 Lexington Avenue, Suite 300  
New York, New York 10170

Attn.: Kevin J. Lennon, Esq.

**RE : PAYMENT GUARANTEE NO. DOC-303456 FOR USD60,000.00  
IN RESPECT OF SECURITY FOR CLAIM AGAINST MARITIME  
ATTACHMENT AND GARNISHMENT OF SEAFRIGO "MARSEILLE"  
MONIES LOCATED IN U.S. BANKS**

Description of Claim: Claim for damages to cargo moving from Le Havre, France to Newark, New Jersey pursuant to the Seafrigo House Bill of Lading no. E350390000 dated September 22, 2006 and which claim is subject to the captioned complaint entitled Cantone & Co., Inc. v. Seafrigo a/k/a Seafrigo Marseille, Docket no.: 07 Civ 6602 filed in the U.S. District Court for the Southern District of New York. Amount of Guarantee: USD60,000.00 (U.S. DOLLARS SIXTY THOUSAND).

Whereas you have commended proceedings and obtained a Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure in New York as security for the above claim: now in consideration of your releasing the said attachment as security for the above claim, we, COMPAGNIE FINANCIERE DU CREDIT MUTUEL, with head office 1 rue Louis Lichou 29480 Le Relecq-Kerhuon/Brest (France), hereby irrevocably undertake to pay you immediately upon receipt by us of an agreement of the parties providing for the payment of a compensation to CANTONE & CO. by SEAFRIGO or a definitive judicial decision condemning SEAFRIGO any sum not exceeding USD60,000.00 (U.S. DOLLARS SIXTY THOUSAND MAXIMUM) such sum, whether principal interests and costs due

It is hereby agreed that you may make more than one demand under this guarantee: save that the total of all sums demanded hereunder may not exceed the sum hereby guaranteed.

This guarantee shall be governed by New York Law and for the purpose of enforcing this guarantee:

1. We hereby submit to and consent to the jurisdiction of the U.S. District Court for the Southern District of New York.

h.

LS

**Département des Activités Internationales**  
**International Department**  
SWIFT : CMBRFR2B

2. We hereby choose as an address for service:

**Compagnie Financière du Crédit Mutuel**  
**International Département**  
**1, rue Louis Lichou**  
**29480 Le Relecq-Kerhuon/Brest (France)**  
**Telephone: (33)2.98.00.24.39**  
**Fax: (33)2.98.00.27.24**  
**Mail: [operations.documentaires@cmb.fr](mailto:operations.documentaires@cmb.fr)**

This guarantee is initially valid for on year from the date of issue i.e. up to December 26, 2008 and shall be automatically renewed and shall remain valid until such time as it is returned for cancellation or until the above claim is either dismissed by judicial judgment or the claim has been settled or paid which ever is the earlier.

Yours faithfully,

**COMPAGNIE FINANCIERE DU CREDIT MUTUEL**  
**INTERNATIONAL DEPARTMENT**

  
**Laurent LEVILLAIN**  
Authorized Signatory

  
**Lucette JOLLY**  
Authorized Signatory

Signed in Brest, on December 26, 2007

# **VENGROW EXHIBIT L**

11/17/2008 FRI 17:12 FAX 212 826 1320 HOSPITALITY GROUP INT

001/011

**CANTONE & Co.**  
14 East 60<sup>th</sup> St., Suite 400  
New York, NY 10022  
212-826-2357 (fax) 212-826-1320

To: Mr. Al Raffa  
Seafrigo USA  
Ref: Viennoiserie Claim  
Fax: 201-867-9320

17 November 2006

Dear Al:

Please see enclosed copies of the following invoices which are part of the total claim of this shipment. Please note that all products in this shipment were damaged, and at this point there is no complete understanding of where the damage happened. Therefore I have included all invoices pertaining; which should all be part of the total claim.


BCS Invoice (enclosed)	Euro 29,756.89	US\$37,791.25
Seafrigo Invoice #IMP04125605-1		\$ 6,754.18
Preferred Freezer		\$ 2,007.12
Preferred Freezer (spot check by Cantone)		\$ 202.50
Preferred Freezer (spot check by Cantone)		\$ 121.50
Preferred Freezer (spot check by Seafrigo) – note yet billed		

Total of Claim

US\$46,876.55

If you need any further details please don't hesitate to contact myself or Reto.

Regards,

  
Sarah C. Nodjourni

9.

**SEAFRIGO USA, INC.**

55 CARTER DRIVE - SUITE 208  
 EDISON, NJ 08817  
 Phone: (201) 770-1143  
 Fax: (201) 867-9320  
 FMC LIC 3616



**Bill To:** CANTONE & COMPANY, INC.  
 14 EAST 60TH STREET  
 NEW YORK, NY 10022

INVOICE	
DATE	INVOICE#
10/05/06	IMP04125605-01

OUR REF#: IMP04125605

YOUR REF#: EISU5648130

Description	Charges
DUTY & TAXES	127.56
ENTRY FEE	160.00
PRE-CARRIAGE	1,404.00
AMS FEE	19.50
ISPS	19.50
OCEAN FREIGHT	3,410.00
BUNKER ADJ FACTOR	886.00
B/L FEE	30.00
INSURANCE	304.62
CUSTOMS EXAM FEE	393.00

VESSEL: STADT WISMAR  
 SHIPPER: BCS / BVF  
 CONSIGNEE: CANTONE & COMPANY, INC.  
 MBL# / MAWB#: HTML540600103855  
 HBL# / HAWB#: E36039700000

NOTES: CONT# EISU5648130  
 EXAM CHARGES ARE FOR XRAY  
 PERFORMED IN NY PORT

DUE	TOTAL AMOUNT DUE	\$6,754.18
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Notice is hereby constituted under the truth Intending act that any accounts remaining unpaid after 10 days from the indicated terms are subject to 1.5% per month interest and collection costs, including attorney fees.

# **VENGROW EXHIBIT M**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CANTONE & CO., INC.,

Plaintiff,

- against -

SEAFRIGO a/k/a SEAFRIGO MARESEILLE,

Defendant.  
-----X

07 CV 6602 (PKL) (DCF)

ECF CASE

**AFFIDAVIT IN SUPPORT OF PRAYER FOR MARITIME ATTACHMENT**

State of Connecticut )

)

ss: SOUTHPORT

County of Fairfield )

Kevin J. Lennon , being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and represent the Plaintiff herein. I am familiar with the facts of this case and make this Affidavit in support of Plaintiff's prayer for the issuance of a Writ of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure.

**DEFENDANT IS NOT PRESENT IN THIS DISTRICT**

2. I have attempted to locate the Defendant, SEAFRIGO a/k/a SEAFRIGO MARESEILLE within this District. As part of my investigation to locate the Defendant within this District, I checked the telephone company information directory, as well as the white and yellow pages for New York listed on the Internet or World Wide Web, and did not find any listing for the Defendant. Finally, I checked the New York State Department of Corporations' online database which showed no listing or registration for the Defendant. The online database does, however, provide a listing for Seafrigo International Inc. However, although listed as a

New York corporation the listing provides that this entity only has a presence in Elizabeth, New Jersey and does not have a registered agent for service of process in the District. Further, although this company may be related to the Defendant, it is not the Defendant named in this action.

3. I did locate a website believed to be owned and operated by the Defendant hosted at [www.seafrigo.com](http://www.seafrigo.com). A review of that website provides that Defendant does not have a presence in this District. Upon information, the Defendant has an affiliated company located in Secaucus, NJ named Seafrigo U.S.A. and although that company was involved – apparently as an agent on behalf of the Defendant – in the transaction discussed in the Plaintiff's Complaint, that entity is not a named Defendant herein.

4. I submit based on the foregoing that the Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claim.

5. Upon information and belief, the Defendant has, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of in the hands of garnishees within this District, which are believed to be due and owing to the Defendant.

6. This is Plaintiff's first request for this relief made to any Court.

**PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER**

7. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing the undersigned, Patrick F. Lennon, Charles E. Murphy, Nancy Peterson or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC be and is hereby appointed, in addition to the United States Marshal, to serve the Process of

Maritime Attachment and Garnishment and the Verified Complaint, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold assets of, for or on account of, the Defendant.

8. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment ultimately obtained by Plaintiff and entered against the Defendant.

9. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishes to be identified in the writ.

**PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES**

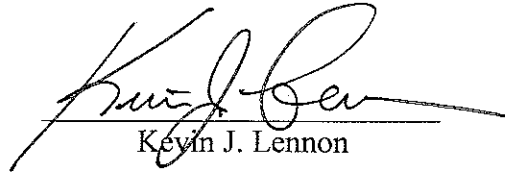
10. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendant, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

**PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS**

11. Further, in order to avoid the need to repetitively serve the garnishees/banks, Plaintiff respectfully seeks further leave of the Court, as set out in the accompanying Ex Parte

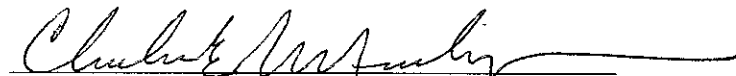
Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service of process throughout any given day on which process is served through the next day, provided that process is served the next day, to authorize service of process via facsimile or e-mail following initial *in personam* service.

Dated: July 23, 2007  
Southport, CT



Kevin J. Lennon

Sworn and subscribed to before me  
this 23rd day of July, 2007.



Notary Public/Commissioner of Superior Court